



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 8, 2003

Ms. Laura Garza Jimenez  
Nueces County Attorney  
County of Nueces  
901 Leopard, Room 207  
Corpus Christi, Texas 78401-3680

OR2003-5541

Dear Ms. Jimenez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 185614.

The Nueces County District Clerk (the "clerk") received a request for the criminal history database containing felony and misdemeanor information. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the submitted representative sample of information.<sup>1</sup>

Because the request was directed to the clerk, we must consider whether chapter 552 of the Government Code is applicable in this instance. Chapter 552 applies to information maintained by a governmental body. The definition of governmental body "does not include the judiciary." *See* Gov't Code § 552.003(1)(B). Thus, chapter 552 is not applicable to judicial records. *See also Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.--San Antonio 1983, no writ); Attorney General Opinion DM-166 (1992); Open Records Decision No. 618 at 4 (1993). To fall under the judiciary exclusion, the records requested must contain information that pertains to judicial proceedings and be subject to direct supervision of a court. Open Records Decision No. 671 (2001) (citing Open Records Decision No. 646 at 5 (1996)).

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<sup>1</sup> We assume that the "sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Under section 51.303 of the Government Code, district court clerks are required to "(1) record the acts and proceedings of the court; (2) enter all judgments of the court under the direction of the judge; and (3) record all executions issued and the returns on the executions." Such information is presumably collected, assembled and maintained in the clerk's case disposition database, and pertains to judicial proceedings. Upon review of the submitted records, we find that they constitute this type of information. Therefore, because the information responsive to this request consists of judicial records, the clerk is not required to comply with this request under chapter 552 of the Government Code. *See* Gov't Code § 552.0035 (access to information maintained by or for judiciary is governed by rules adopted by Supreme Court); Tex. R. Jud. Admin. 12 (public access to judicial records); Attorney General Opinion DM-166 at 1 (chapter 552 neither authorizes information held by judiciary to be withheld nor requires it to be disclosed). As chapter 552 is not applicable in this instance, we need not address your argument under section 552.101.

We note, however, that certain judicial records may be open to the public under sources of law other than chapter 552. *See Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992) (documents filed with court are generally considered to be public); Attorney General Opinion DM-166 at 3 (public has general right to inspect and copy judicial records); Open Records Decision No. 618 at 4 (Texas courts have recognized common-law right of public to inspect and copy records of judiciary); *see also* Local Gov't Code § 191.006 (records belonging to office of county clerk shall be open to public unless access restricted by law or court order).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental

body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kristen Bates  
Assistant Attorney General  
Open Records Division

KAB/lmt

Ref: ID# 185614

Enc. Submitted documents

c: Ms. Kristine Rios  
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(w/o enclosures)